



KAPLAN KIRSCH ROCKWELL

230841

August 22, 2011

Via electronic filing
Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
AUG 20 2011
Part of
Public Record

**Re: Chesapeake Railroad Company – Certificate of Interim Trail Use and
Termination of Modified Rail Certificate
STB Finance Docket No. 32609**

Dear Ms. Brown:

Attached for filing in the above referenced proceeding is the Motion of the Maryland Transit Administration for an Extension of Time to Negotiate Trail Use Agreement.

Please contact me with any questions about the enclosed.

Sincerely,

Allison I. Fultz

Enclosure

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32609

**CHESAPEAKE RAILROAD COMPANY – CERTIFICATE OF INTERIM TRAIL USE
AND TERMINATION OF MODIFIED RAIL CERTIFICATE**

**MOTION OF THE
MARYLAND TRANSIT ADMINISTRATION
FOR FURTHER EXTENSION OF PERIOD FOR NEGOTIATION OF
TRAIL USE AGREEMENT**

Communications with respect to this pleading
should be addressed to:

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Counsel for the Maryland Transit Administration

Dated: August 22, 2011

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SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32609

**CHESAPEAKE RAILROAD COMPANY – CERTIFICATE OF INTERIM TRAIL USE
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The Maryland Transit Administration (“MTA”), pursuant to 49 C.F.R. § 1104.7(b), hereby submits this Motion for a further extension of the time period afforded under 49 C.F.R. § 1152.29(c)(1) for negotiation of a trail use agreement in this proceeding. In a Decision served on April 22, 2011 (*Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date Apr. 22, 2011)), this Board granted the request of MTA (Motion of the Maryland Transit Administration for Further Extension of Period for Negotiation of Trail Use Agreement – *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Filed Mar. 29, 2011)), to extend the time to negotiate a trail use agreement to August 23, 2011. MTA seeks an extension of the trail use negotiation period from August 23, 2011, until 60 days after the conclusion of proceedings currently pending before the United States Court of Appeal for the Fourth Circuit in Case No. 11-1412, as described below. MTA reasonably anticipates that the Fourth Circuit will issue its decision in that case in mid-2012. Accordingly, MTA requests that the trail use negotiation period be extended to permit MTA to continue to negotiate with potential substitute trail sponsors while the Fourth Circuit

considers MTA's Petition for Review of the Board's Decision of February 24, 2011 (*Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date Feb. 24, 2011)) (the "February 24, 2011, Decision").

BACKGROUND

The Board issued a Certificate of Interim Trail Use ("CITU") in this proceeding to permit MTA to establish interim trail use on the Clayton-Easton Line, which extends from MP 00.0 in Clayton, DE, to MP 45.3 in Easton, MD, and on a segment in Maryland, the Denton Spur, from MP 00.0 in Queen Anne, MD, to MP 8.8 in Denton, MD. *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date Jan. 9, 2006).¹ On June 28, 2006, MTA submitted a statement of willingness to assume financial responsibility ("SWAFR") under 49 C.F.R. § 1152.29(a)(3) from the Maryland Department of Transportation ("MDOT") (MTA – Supplemental Motion of the Maryland Transit Administration for Extension of Period for Negotiation of Trail Use Agreement, Exhibit 1, *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Filed Jun. 28, 2006)), and the Board acknowledged acceptance of MDOT's SWAFR in a Decision issued on July 10, 2006 (*Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date Jul. 10, 2006)).

Following issuance of the CITU, MTA continued to negotiate with MDOT and other prospective trail sponsors, and the Board granted several requests to extend the time to negotiate

¹ On July 5, 2007, the Board issued a Decision granting MTA's request to remove an approximately 5.514 acre segment of spur track known as the "Easton Spur" from the CITU, and to partially vacate the CITU as to the Easton Spur. *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date July 5, 2007).

a trail use agreement. Prior to the end of the negotiating period that expired on September 27, 2008, MTA submitted a Notice of Consummation of Trail Use Agreements confirming that MTA had entered into trail use agreements with (a) Delaware Department of Natural Resources and Environmental Control (“DNREC”) for interim trail use on the Delaware portion of the line and (b) Maryland Department of Natural Resources (“MDNR”) for the remainder of the line. MTA – Notice of Consummation of Trail Use Agreements, *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Filed Sept. 26, 2008) (“Notice of Consummation”). MTA attached copies of the SWAFR provided by DNREC and the Lease Agreement between MTA and MDNR, which included MDNR’s SWAFR, to its Notice of Consummation. On May 22, 2009, MTA submitted a request to amend the Notice of Consummation in order to substitute a License Agreement between MTA and DNREC, which included DNREC’s SWAFR, for the SWAFR MTA had submitted as an attachment to the original Notice of Consummation. MTA – Request to Amend Notice of Consummation of Trail Use Agreements, *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Filed May 22, 2009). The Board’s Acting Secretary then issued a Decision rejecting the SWAFRs of MDNR and DNREC as not fully complying with the requirements of 49 C.F.R. § 1152.29(a)(3). *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date Aug. 21, 2009). MTA appealed this Decision to the full Board, and the Board issued its Decision on February 24, 2011, denying MTA’s appeal.

In light of the February 24, 2011, Decision, MTA requested, and the Board granted, an extension of time through August 23, 2011, to continue to negotiate trail use agreements with

prospective trail users, as discussed above. *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609, slip op. at 3 (Service Date Apr. 22, 2011). Subsequently, on April 22, 2011, MTA filed a Petition for Review of the February 24, 2011, Decision in the United States Court of Appeals for the Fourth Circuit, Case No. 11-1412. The Board issued a Notice of the institution of court action in this matter (*Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date May 5, 2011)). MTA's opening brief is due on September 26, 2011, and the case is expected to be resolved by mid-2012.

DISCUSSION

Pursuant to 49 C.F.R. § 1104.7(b), the Board has the authority to grant extensions of time to allow parties to complete negotiations with prospective trail users. There is no limit on the duration of any such extension. Because the issues raised in MTA's Petition for Review relate to the form and terms on any interim trail use agreement with the likely trail sponsors, MTA respectfully requests an extension of time to negotiate a trail use agreement until 60 days after the U.S. Court of Appeals for the Fourth Circuit issues its final decision on the merits of MTA's Petition for Review.

WHEREFORE, and in view of the foregoing, MTA respectfully requests the Board to extend the time for negotiation of trail use in this matter until 60 days after the conclusion of MTA's pending proceeding before the Fourth Circuit, which is anticipated to occur in mid 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", is written over a horizontal line.

Charles A. Spitulnik

W. Eric Pilsk

Allison I. Fultz

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Counsel for the Maryland Transit Administration

Dated: August 22, 2011

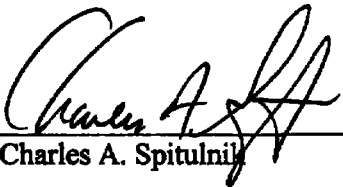
CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing MOTION OF THE MARYLAND TRANSIT ADMINISTRATION FOR FURTHER EXTENSION OF PERIOD FOR NEGOTIATION OF TRAIL USE AGREEMENT, upon the following parties of record in this proceeding by first class mail with postage prepaid and properly addressed:

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Charles A. Spitulnik

Dated: August 22, 2011